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9
10 **BEFORE THE**
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1B-2007-178311

13 **KIRK ROBERT ALLEN, DPM**
1011 Cass St., No. 102
14 Monterey, CA 93940

OAH No.

A C C U S A T I O N

15
16 Podiatric Medicine Certificate No. E-1923,
17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. James H. Rathlesberger brings this Accusation solely in his official
23 capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer
24 Affairs.

25 2. On or about December 22, 1975 the Board of Podiatric Medicine
26 ("Board") issued Podiatric Medicine Certificate E-1923 to Kirk Robert Allen (Respondent).
27 This license was in full force and effect at all times relevant to the charges brought herein and
28 will expire on July 31, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2222 provides that all acts of unprofessional conduct proscribed by Chapter 5 are applicable to podiatrists as well as to physicians and surgeons.

5. Section 2497(a) states:

"The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222."

6. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency

1 examinations, continuing education activities, and cost reimbursement associated
2 therewith that are agreed to with the division and successfully completed by the
3 licensee, or other matters made confidential or privileged by existing law, is
4 deemed public, and shall be made available to the public by the board pursuant to
5 Section 803.1."

6 7. Section 2234 of the Code states, in relevant part:

7 "The Division of Medical Quality shall take action against any licensee who
8 is charged with unprofessional conduct. In addition to other provisions of this
9 article, unprofessional conduct includes, but is not limited to, the following:

10 (a) Violating or attempting to violate, directly or indirectly, assisting in or
11 abetting the violation of, or conspiring to violate any provision of this chapter
12 [Chapter 5, the Medical Practice Act, section 2000 et seq.]."

13 8. Section 2237 provides, inter alia, that a conviction of a charge of
14 violating any state statute regulating dangerous drugs or controlled substances
15 constitutes unprofessional conduct. For purposes of this section a plea of guilty or
16 nolo contendere is deemed a conviction.

17 9. Section 492 states, in relevant part:

18 "Notwithstanding any other provision of law, successful completion of
19 any diversion program under the Penal Code, or successful completion of an
20 alcohol and drug assessment program...shall not prohibit any agency...from taking
21 disciplinary action against a licensee...."

22 10. Section 2497.5(a) provides that the board may request the
23 administrative law judge, in his or her proposed decision in a disciplinary
24 proceeding before the board, to order any licensee found guilty of unprofessional
25 conduct to pay the board a sum not to exceed the actual and reasonable costs of the
26 investigation and prosecution of the case.

27 11. Health and Safety Code section 11350(a) makes it a felony to
28 possess any of the enumerated controlled substances, including cocaine and its

1 derivatives, unless the possessor holds a valid prescription for the controlled
2 substance.

3 12. Health and Safety Code section 11364 makes it a misdemeanor to
4 possess any device or paraphernalia for smoking or injecting any of the enumerated
5 controlled substances, including cocaine and its derivatives.

6 13. Health and Safety Code section 11550(a) makes it a misdemeanor
7 for any person to use, or be under the influence of, any of the identified controlled
8 substances, including cocaine and its derivatives, unless the controlled substance is
9 administered by, or under the direction of, a person licensed by the state to
10 dispense, prescribe, or administer controlled substances.

11 12 **FIRST CAUSE FOR DISCIPLINE**

13 (Conviction of Violation of Controlled Substance Law)

14 14. Respondent is subject to disciplinary action for unprofessional
15 conduct as defined by section 2237, in that on or about October 17, 2006, in the Monterey
16 County Superior Court, he entered a guilty plea to violation of Health and Safety Code
17 section 11350(a), a felony. The circumstances are as follows:

18 15. On or about August 13, 2006 at approximately 12:40 a.m. an officer
19 of the Seaside Police Department on patrol became concerned when he saw the occupants
20 of a parked truck behaving oddly. The officer initiated contact with the truck's occupants
21 and noticed that one, later identified as Respondent Kirk Robert Allen, was in a state of
22 undress. When speaking with Respondent, the officer observed objective signs that
23 Respondent was under the influence of alcohol and/or drugs. A probable cause search of
24 the vehicle produced a "crack pipe" and a small off-white rock later identified as cocaine
25 base. Respondent denied ownership of the pipe but admitted having used the pipe to
26 smoke crack cocaine earlier in the evening.

27 16. Based on the contraband seized and Respondent's admission,
28 Respondent was arrested for possession of a controlled substance [Health and Safety Code

1 section 11350(a)] a felony, being under the influence of a controlled substance [Health and
2 Safety Code section 11550(a)], a misdemeanor, and possession of controlled substance
3 paraphernalia [Health and Safety Code section 11364] a misdemeanor. Respondent was
4 transported to the Seaside Police Department, booked on these charges, and some hours
5 later released on bail.

6 17. Respondent was formally charged by the district attorney of
7 Monterey County with those misdemeanors and felony at arraignment proceedings in
8 Monterey County Superior Court on or about August 23, 2006, by Criminal Complaint
9 No. 060813001.

10 18. On or about October 17, 2006 Respondent entered a guilty plea to
11 Count 1 of the Complaint, Possession of a Controlled Substance [Health and Safety Code
12 section 11350(a)], a felony. The two misdemeanors were dismissed. Respondent was
13 granted deferred entry of judgment for a period of 18 to 36 months and ordered to
14 complete a specified diversion program.

15 19. Respondent's conviction of violation of a state statute regulating
16 dangerous drugs or controlled substances constitutes unprofessional conduct as defined by
17 section 2237 and subjects Respondent's license to discipline by application of section
18 2222 and section 2497(a).

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20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters
22 herein alleged, and that following the hearing, the Board of Podiatric Medicine issue a
23 decision:

24 1. Revoking or suspending Podiatric Medicine Certificate Number E-
25 1923, issued to Kirk Robert Allen, DPM;

26 2. Ordering Kirk Robert Allen, DPM to pay the actual and reasonable
27 costs of investigation and prosecution of this case;

28 3. Ordering Kirk Robert Allen, DPM, if placed on probation, to pay

1 the Board of Podiatric Medicine the costs of probation monitoring; and
2 4. Taking such other action as deemed necessary and proper.

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4 DATED: January 17, 2008

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7 JAMES H. RATHLESBERGER
8 Executive Officer
9 Board of Podiatric Medicine
10 Department of Consumer Affairs
11 State of California
12 Complainant
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